

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PATRICK MORIN, et al.,

Plaintiff(s),

-against-

CATSKILL MOUNTAIN MECHANICAL, LLC,
et al.,

Defendant(s).

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**REPORT AND
RECOMMENDATION**
CV 07-1992 (LDW)(WDW)

WILLIAM D. WALL, United States Magistrate Judge:

Before the court is the plaintiffs' letter motion asking that the answer be stricken and a default judgment entered, based on the defendants' repeated failures to comply with court orders and to provide discovery. DE[18]. For the reasons set forth herein, the undersigned recommends that the motion be granted, the answer and counterclaims stricken and a default judgment entered.

DISCUSSION

On July 15, 2008, the undersigned granted the plaintiffs' motion to compel, ordering the defendants to comply with all outstanding discovery by July 31, 2008, and produce deposition witnesses by August 15, 2008. The defendants were ordered to pay \$2000 as costs of the motion and were expressly warned that failure to comply would result in the answer be stricken and a default judgment entered. See DE[17]. The pretrial conference was scheduled for August 19, 2008. On August 7, the plaintiffs made their motion to strike and for default, reporting that the defendants had failed to fully comply with this court's order of July 15th and had failed to pay the \$2000 in sanctions. No opposition to the motion was entered by the defendants. On August 19, plaintiffs' counsel appeared for the pretrial conference. There was no appearance by the

defendants. On that date, the undersigned entered an order stating that the undersigned would recommend that District Judge Wexler strike the answer and enter a default judgment, and sanctioning defense counsel for his failure to appear. DE[19]. On August 20, defense counsel docketed a letter apologizing for his failure and stating that he believed an appearance would not be necessary because he assumed the Court would grant the plaintiffs' unopposed letter motion.

The undersigned thus recommends that the defendants' answer and counterclaims be stricken and a default entered, based on their repeated failures to comply with the court's orders. See Rule 37 (b) (iii) and (vi).

OBJECTIONS

A copy of this Report and Recommendation is being sent to counsel for all parties by electronic filing on the date below. Any objections to this Report and Recommendation must be filed with the Clerk of the Court with a courtesy copy to the undersigned within 10 days. Failure to file objections within this period waives the right to appeal the District Court's Order. *See* 28 U.S.C. §636 (b) (1); Fed. R. Civ. P. 72; *Beverly v. Walker*, 118 F.3d 900, 902 (2d Cir. 1997); *Savoie v. Merchants Bank*, 84 F.3d 52, 60 (2d Cir. 1996).

Dated: Central Islip, New York
August 22, 2008

s/ William D. Wall
WILLIAM D. WALL
United States Magistrate Judge